



MEMORANDUM

To: Members of the House Labor Committee

From: Wendy Block, Director of Health Policy and Human Resources

Date: May 5, 2010

Re: MI Chamber Opposes HB 5962

The purpose of this memorandum is to inform you of the Michigan Chamber's **opposition** to HB 5962, legislation to restrict the use of independent contractors under Michigan's workers' compensation law.

The Michigan Chamber does not condone any business that intentionally misclassifies an employee as an independent contractor; however, we believe HB 5962 is seriously flawed and are opposed to the legislation as drafted for several reasons:

- Rather than give more clarity or benchmarks for employers, this legislation makes the employee classification process even more burdensome and complicated by establishing a subjective test that conflicts with the two tests already in place and enforced by the Internal Revenue Service (IRS) and the US Department of Labor. By all estimates, it would be extremely difficult and risky – if not impossible – to classify an individual as an independent contractor if this bill were to be enacted. We believe this would be an unfortunate development both for these individuals and job providers across the state, as the independent contractor model presents a viable entrepreneurial opportunity for individuals to grow their own businesses, contributing to the health and growth of the Michigan economy.
- The legislation unfairly and unjustifiably includes a presumption that employers are improperly misclassifying workers, taking a "guilty until determined innocent" approach.
- The penalties set forth in the legislative are excessive and unjustifiably punitive for both intentional and unintentional offenses (e.g., for "knowingly" violating the act, a felony punishable by imprisonment for up to seven years and/or a fine of up to \$30,000; for "unintentional" violations, a misdemeanor punishable by imprisonment for up to one year and/or a fine up to \$5,000). The legislation creates no safe harbors for employers who are doing everything they can to comply with the letter of the law so it is likely that many businesses will become entangled in costly disputes with the State even though their actions are lawful.
- The legislation grants the Workers' Compensation an excessive amount of power, including the authority to make sole determinations about classification, assess penalties/administrative penalties, issue stop-work orders, etc.

- HB 5962 creates a new excuse for employees and third party organizations, such as labor unions, to sue employers.

During this economic downturn, Michigan should do all it can to stimulate and maintain successful businesses. Unfortunately, HB 5962 is a clear disincentive for businesses using the services of independent contractors in good faith. We agree that there may be a legitimate need to address the abuses of the independent contractor model but disagree that HB 5962 is the appropriate response.

Please do not hesitate to contact me at 517/371-7678 if you have any questions.